

Minutes of the April 27, 2012 Regular Council Meeting

Call to Order and Flag Salute at 3:45 pm by Mayor Serio.

Council in Attendance: Serio, Bunting, Langan, Weistling, Carmean, Tingle and Smallwood

Absent: None

President's Report

- Mayor Serio advised that the Town has met with DNREC and Sussex County Council in an effort to increase funding for lifeguarding services to the State beach. The Town has signed a contract with an additional \$5000 from DNREC. Councilman Vance Phillips generously donated \$10,000 and County Council has committed to contributing although no firm amount was set. This is a 3-year contract. The Town was assured that both DNREC and County Council understand the situation and will work with the Town for a solution.
- Mayor Serio advised that the permit is pending for the kayak launch at Cannon Street Park. The Town should receive notification of grant awards in May. DNREC requested that the Town seek input from those property owners nearest the park; one property owner objected to the size of the launch and advised DNREC.
- A Rain Garden expert from St Michael's (MD) inspected the area of the Cannon Street Park. He was recommended by the Center for the Inland Bays. He agrees with CIB that the best location is next to the Public Works building so that the rain garden can accept run-off from the roof. A professional landscaper will review the overall plot and forward his/her recommendations to Council. A committee meeting will be held to review the plans.

Topics for Discussion and Possible Action

- **Recycling Contract – Town Manager Burke**

Town Manager Burke advised that his predecessor advertised the RFP for curbside recycling. Bids were opened on March 23, 2012 with only the current contractor bidding. Allied Waste Disposal has bid on the multi-year contract extending from 9/1/2012 – 8/31/2015. Bid amount for 700 units is \$34,020 (\$3,000 less than the current contract).

Motion to approve contract award – Council Member Tingle

Second – Council Member Langan

DISCUSSION:

Council Member Weistling asked if they will continue the same collection schedule; Town Manager Burke advised that they will unless Council wants to make a change. Council Member Smallwood estimated that the new contract represents a savings of approximately \$40 per year per property.

VOTE: (7-0) Contract award approved

- **Beach Mats – Town Manager Burke**

Town Manager Burke introduced Bryan Reed, Public Works Supervisor, who shared his experience with the test installation of the alternate beach mat. The Public Works Department received instruction on mat installation and the mat was placed on Cannon Street along with a Mobi Mat. The testing and comment period was over Easter Week. The alternate mat is less expensive than Mobi Mat. The Town has allocated \$25,000 for the purchase of beach mats with the hope of securing an additional \$25,000 through a State grant. If awarded the grant, the Town may be required to place one mat on Bayard Street crossover (handicap access beach).

DISCUSSION:

Council Member Weistling asked about the ordering/delivery/installation schedule; Mr. Burke assured Council that we will be able to have them installed in time for Memorial Day. Council Member Tingle noted that the quality of the Mobi Mat exceeds that of the Path Mat. Council Member Carmean did not care for the edging or the connectors on the Path Mat; Council Member Smallwood agreed. Council Member Langan asked how the mat holds up to ATV traffic; Bryan Reed noted that both mats handled the ATV but that the Mobi Mat seems to hold up better.

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Motion to purchase Mobi Mats contingent on securing grant funds – Council Member Tingle

Second – Council Member Bunting

VOTE: (7-0) Motion passed

Approval of Minutes:

Motion to Approve the Minutes of March 23, 2011 Meeting - Council Member Carmean

Second - Council Member Langan

DISCUSSION - None

Vote: All in favor to accept the minutes (6-0- 1) Council Member Tingle abstained

Minutes approved

Treasurer's Report:

Council Member Bunting advised there do not appear to be any major issues with the budget. He is working with Town Manager Burke on a proposed FY13 budget that will be discussed at the May 22, 2012 Budget Committee meeting.

Motion to accept the Treasurer's Report – Council Member Carmean

Second – Council Member Langan

Vote: All in favor to accept the Treasurer's report (7-0)

Treasurer's Report accepted.

Town Manager Report:

Town Manager Burke reported that:

- The staff will attend an in-house Emergency Management meeting in May
- Mr. Burke has met with DNREC and Council Member Carmean regarding the snow fences on the dunes. DNREC agrees that they need repair and will take steps to do so as quickly as possible. The Public Works department has been given permission to trim back broken edges so that no one is injured; Bryan Reed reported that the job is finished.
- Lifeguard Services contract with DNREC is now \$45,000 for FY12. He hopes for another \$15,000 this year and for the next two years from various sources.
- The Environmental Committee has requested that the DNREC Water Quality sign be placed on Dagsboro Street near the beach. A second sign is available to be placed at Council's discretion. Council nodded approval.
- Repairs to the irrigation system by Sposato should be complete by May 26, 2012

Council Member Weistling noted that Mr. Burke has a new baby at home and offered Council's congratulations.

Department Reports:

- Building Official – Patricia Schuchman advised that her report is included in the meeting packet.
 - Mrs. Schuchman added that revenue this month is \$24,704. She issued two new construction permits in March and one in April. She anticipates two more may be issued before the May 31 cut-off for pile driving.
 - Charter and Ordinance Committee will meet on May 1, 2012 at 9:30 AM.
- Public Works – Bryan Reed advised that his report is included in meeting packet.
 - The Public Works department has been busy getting ready for the summer season.
 - Council Member Smallwood noted that they have been spraying weeds on the roadsides and asked if they had considered not doing it since it is adding chemicals to the water. Supervisor Reed advised that the Town now uses an environmentally-friendly herbicide. The spraying is done to keep the right of way clear for safety sake and for appearances.
 - Town Manager Burke thanked the members of the Public Works department for their work. He advised that the Environmental Committee requested that the Town install pet waste dispensers on Bunting Avenue. He has an invoice for four dispensers (\$500) that he can purchase and the Public Works department can install. The Surf Rider Association restocks the holders as a public service.
- Beach Patrol – No report

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- Fenwick Island Police Department – Chief Boyden reported that in addition to his report (included in Council booklet) the Town will hold a combination Memorial Day Ceremony and Public Safety Building Dedication on Saturday, May 26, 2012 at 10:00 AM. There will be an open house at the building until 2:00 PM.
 - Chief Boyden asked for assistance in locating a speaker for the dedication
 - Mayor Serio added that there will be a ribbon cutting and a light brunch served.
 - Council Member Carmean asked who is doing the moving for the department; Chief Boyden advised that members of the FIPD are doing the moving. He is waiting for the technology contractors to complete their work before moving the remaining items.

Committee Reports:

- Beach Committee –No report
- Environmental Committee – Buzz Henifin reported that Mary Ellen Langan is now Chairperson for the committee. He thanked Town Manager Burke for taking swift action on the dog waste containers. Mr. Henifin addressed Council Member Smallwood's concern over chemicals being used to treat weeds by noting that the herbicide being used is very successful.
 - Mr. Henifin asked if the Town might turn off some of the lights on the Public Safety Building and asked the reason that the electric utility bill is gone up. Council Member Langan advised that the solar panels had been turned off for a few months due to construction and that the lights on the building are energy-saving LEDs. Council Member Weistling added that ~~they might consider putting some of the lights~~ some may be adjusted because they are on timers.
 - Mr. Henifin asked if the Town might change the trash collection schedule to Monday and Friday vs. Monday and Thursday in order to control some of the trash that piles up over the weekend. Mayor Serio advised that the reason it is picked up on Thursday and not on Friday is because the landfill is closed on Saturday and the Town's trash trucks would have no place to dump their containers until the following Monday. The Town will inquire if the pick-up day(s) can be changed.
- Public Safety Building – Council Member Langan reported that the building is complete and that a few punch list items remain. The contractor will be paid in early May.

Planning Commission: Report included in Council book. Winnie Lewis reported that the Town is undergoing a mandatory 5-Year Review of its Comprehensive Land Use Plan. Annual reports up to this time are available on line. The Planning Commission will meet in Dover on June 27, 2012 for the PLUS Review; Council will then be asked to consider the panel's comments/recommendations for possible inclusion into the 5-Year Review Report. Mrs. Lewis added that the Planning Commission is accepting comments up until their May 15, 2012 meeting; comments will be reviewed for possible inclusion into the report at that time. A full re-write of the Plan will be due in another five years.

- Council Member Carmean submitted her recommendations for suggested changes to the document. Mrs. Lewis advised that the Planning Commission will consider her recommendations at its next meeting.

Charter & Ordinance

- **Proposed Second Reading Chapter 120 Property Maintenance (Stormwater Management) – Council Member Weistling**

Council Member Weistling motioned that Council accept the proposed second reading (copy attached to these minutes).
Second – Council Member Langan

DISCUSSION

Council Member Weistling asked that Council refer to the minutes of the Regular Council Meeting from March 23, 2012 for a concise explanation of the change.

Vote: (7-0) Smallwood, yes; Carmean, yes; Bunting, yes; Serio, yes; Weistling, yes; Tingle, yes; Langan, yes – motion passed

Council Member Weistling motioned that the Council accept changes to 120-3; 120-4; 120-5; and 120-6
Second – Council Member Langan

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DISCUSSION – Building Official Schuchman noted that these changes are effective immediately.

Vote: (7-0) Smallwood, yes; Carmean, yes; Bunting, yes; Serio, yes; Weistling, yes; Tingle, yes; Langan, yes – motion passed

- **Proposed First Reading Chapter 160-3 District Boundaries – Council Member Weistling**

Council Member Weistling motioned that Council accept the proposed first reading (copy attached to these minutes).
Second – Council Member Langan

DISCUSSION:

Council Member Weistling advised that, now that the Town has a new park, the Charter and Ordinance Committee believes that there is a need to add “parks” to the ordinance. Town Solicitor, Mary Schrider-Fox, provided the Committee with sample ordinances and the Millsboro ordinance was chosen as a template. The Ordinance addresses regulations, accessory use and structures.

- Mayor Serio questioned the reason for including set-backs in the ordinance. Council Member Weistling noted that Mrs. Schrider-Fox advised that the set-backs should be similar to current residential and commercial regulations. If set-backs are not created for this new category, the Town will need to refer back to set-backs already in place.
- A general discussion ensued as to the need for the set-back requirement, safety issues, and impacts on the current plans for the Cannon Street Park. It was determined that the ordinance can be adjusted in the future if needed.

Vote: (7-0) to accept the first reading of Chapter 160-3 District Boundaries.

Council Member Weistling noted that the Charter and Ordinance Committee will bring a change to Chapter 142-Subdivision to Council. Building Official Schuchman explained that the current ordinance requires that certified mail be used to notify the nearest 20 properties to a proposed subdivision. The fee for a hearing is \$275 and the cost of each certified letter is \$5.75. Certified mailing is not required by either the County or the State. The number of properties notified may also change.

Old Business – None

New Business – No Action to be Taken - None

Public Participation:

- Carrie Subity (Bethany-Fenwick Chamber of Commerce) – addressed Council. The Chamber is offering movies on the beach this summer and would like the Town to participate. Council suggested that she develop a formal proposal for the next Regular Council meeting in May for them to consider.
- Buzz Henifin (48 Windward Way) – thanked the Town for its hospitality during the recent Presidential Primary.
- Lynn Andrews (1205 Schulz Rd) – read a petition to Council to name the Cannon Street Park after Mary Pat Kyle. She advised that the Fenwick Island Society of Homeowners (FISH) would pay for a sign. Mayor Serio noted that Council will take it under advisement.
 - Mrs. Andrews continued by noting her unhappiness with another sign being added to the Town (water quality sign) and asked if the “dual highway” signs might be removed. Mayor Serio advised that they are owned by DelDOT and Town cannot remove them.

Upcoming Events and Meetings:

Mayor Serio announced all upcoming meetings and events.

Motion to adjourn – Council Member Weistling

Second – Council Member Bunting

Meeting adjourned at 5:00 PM.

Agnes DiPietrantonio, Town Clerk
for Diane Tingle, Secretary

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*Proposed First Reading – March 23, 2012
Proposed Second Reading – April 27, 2012
APPROVED April 27, 2012*

ADD:

§ 120-2. Surface and Storm Water Management on Private and Public Property

In an attempt to reduce the discharge of pollutants and sediment in surface and storm water runoff and in an attempt to control erosion of the banks and waterways within the Town, the Town Council has adopted the following ordinance:

- A. Roof Drainage System (RDS): Any equipment and/or facilities, including, but not limited to, gutters, downspouts, and piping, that are used for the purpose of transporting and disposing of roof rain water.
 - 1. Roof Drainage Systems on all new construction and/or on substantial improvements to existing properties shall not extend into the front or rear setbacks and shall not be located closer than 5 feet from the side property line.
 - 2. Roof Drainage Systems on all new construction and/or on substantial improvements to existing properties shall not extend into canals, lagoons or bay waters.
 - 3. Roof Drainage Systems existing at the time of enactment of this ordinance shall be considered “grandfathered” and shall be permitted to remain. Said existing Roof Drainage Systems, including sections or parts thereof that drain into canals, lagoons or bay waters, may be repaired and maintained. However, Roof Drainage Systems grandfathered hereby shall not be enlarged or remodeled in any manner to include new or additional piping whereby additional drainage into canals, lagoons or bay waters will occur.
- B. All lots, both vacant and those improved with structures, shall have grass, vegetation or stone that will prevent any soil erosion onto or into streets, canals, lagoons, bays waters, other waterways and/or adjacent properties. The only exception to the foregoing requirement is if active construction activities are underway on the lot in question, in which case the foregoing requirements must be met upon the completion of the construction activities. A “Certificate of Compliance” shall not be issued for any new construction and/or for a substantial improvement to an existing structure unless the property owner has complied with this Chapter.
- C. Siltation fencing must be provided during any construction activity that creates a possibility for soil erosion. Such fencing must comply with regulations required by the Sussex Conservation District.
- D. Town rights-of-way must remain clear to allow for and in order to maintain proper drainage. Please see § 61-11 for additional information, restrictions and requirements in this regard.
- E. The use of pervious surface materials outside of the buildable lot area is required to aid in reducing surface and storm water runoff and in order to maintain proper drainage. Please see § 160-6.A.(11) and § 61-11 for additional information, restrictions and requirements in this regard.
- F. Drainage of any swimming or wading pool water not directly into a sanitary sewer shall only occur after the swimming pool water sits for a minimum of 7 days without the addition of any more chemicals.
- G. Outdoor showers shall not be connected to any piping, equipment, facility or system that discharges into canals, lagoons or bay waters, unless the outdoor shower is in existence at the time of enactment of this ordinance, in which case said existing outdoor shower shall be deemed “grandfathered” as further described in § 120-2.A.3. hereof.

EXISTING:

§ 120-2. Written notice of violation

In the event any lot owner shall fail to comply with § 120-1A or B hereof, he shall be given written notice, by certified mail, return receipt requested, of the violation, which notice shall specify the action necessary to correct the violation. The owner shall be required to take the corrective action of a violation of § 120-1A within 30 days of such notice. The owner shall be required to take the corrective action of a violation of § 120-1B within 10 days of such notice.

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PROPOSED:

§ 120-3. Written notice of violation

In the event any lot owner shall fail to comply with § 120-1.A., § 120-1.B., § 120-2.A or § 120-2.B., hereof, he shall be given written notice, by certified mail, return receipt requested, of the violation, which notice shall specify the necessary to correct the violation. The owner shall be required to take the corrective action to remedy a violation of § 120-1.A., § 120-2.A. or §120-2.B within 30 days of such notice. The owner shall be required to take the corrective action to remedy a violation of § 120-1.B. within 10 days of such notice.

EXISTING:

§ 120-3. Failure to comply with notice.

In the event the owner fails to comply with such notice within the time set forth, he shall be deemed to be guilty of maintaining a nuisance and/or unsanitary condition. Therefore, the Town of Fenwick Island shall have:

A. As to a violation of § 120-1A, the authority (be empowered) to both take such steps as it deems necessary to cure said violation at the expense of the owner and impose a fine of \$500 for each thirty-day period in which the violation is not cured.

PROPOSED:

§ 120-4. Failure to comply with notice.

In the event the owner fails to comply with the written notice of violation issued pursuant to § 120-3. within the time period set forth therein, he shall be deemed to be guilty of maintaining a nuisance and/or an unsanitary condition. In such an event, the Town of Fenwick Island shall have:

Add:

C. As to a violation of § 120-2.A. or § 120-2.B., the authority, but not the obligation, to take such steps as it deems necessary to cure the violation, including the option of hiring a professional and licensed contractor to perform the curative work necessary, which shall be done at the expense of the owner. The Town shall also have the authority to impose a monetary fine in the amount of \$500 for each thirty-day period in which the violation is not cured.

EXISTING:

§ 120-4. Repeat offenses; service fee.

In any calendar year in which an owner has been notified of his violation of § 120-1B pursuant to § 120-2 and the owner subsequently repeats the violation, the town will clear the property pursuant to § 120-3 without an additional written notice to the owner, and a separate service fee of \$250 will be charged for each such clearing. The owner will be advised of this procedure in the written notice of the first violation.

PROPOSED:

§ 120-5. Repeat offenses; service fee.

In the event an owner has received a § 120-3. written notice from the Town of a violation of § 120-1.B hereof, and said owner subsequently repeats the same violation during the same calendar year, the Town may, but shall not be obligated to, clear the property pursuant to the authority set forth in § 120-4.B. without additional notice to the owner. As stated in § 120-4.B., a separate service fee of \$500 will be charged for each such clearing. The owner will be advised of this procedure in the written notice of the first violation.

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EXISTING:

§ 120-5. Unpaid fee to become lien against lot.

The expense of the cure and the fine(s) under § 120-3 and the service fee of the \$250 under § 120-4 shall each constitute a lien against the lot in question which lien shall be enforceable and collectible by the means provided for the collection of delinquent taxes under the law of the State of Delaware and the Town of Fenwick Island.

PROPOSED:

§ 120-6. Unpaid fee to become lien against lot.

The expenses incurred by the Town to cure a violation of this Chapter and any monetary fine imposed pursuant to **§ 120-4** and/or any service fee imposed pursuant to **§ 120-5** shall each constitute a lien against the lot in question. Said lien shall be enforceable and the debt shall be collectible in the same manner as the collection of delinquent taxes under the laws of the State of Delaware and the Town of Fenwick Island.

Posted: April 30, 2012

Approved FIRST READING: APRIL 27, 2012

Proposed Second Reading May 18, 2012

EXISTING:

§ 160-3. District boundaries.

- A. For the purposes of this chapter, the Town is hereby divided into Residential and Commercial Zones.
- B. The boundaries of the zones are set forth on a map posted in the Town Hall. *Editor's Note: The Zoning Map is included in a pocket at the end of this volume.* The Commercial Zone is designated in yellow. All remaining land is zoned residential. More specifically, the Commercial Zone extends to a depth of 150 feet on the west side of Route No. 1 between Delaware Avenue and James Street, and to a depth of 130 feet on the east side of Route No. 1 between Atlantic Street and James Street. All remaining land in the Town of Fenwick Island, Delaware, is zoned residential.

PROPOSED:

§ 160-3. District boundaries.

- A. For the purposes of this chapter, the Town is hereby divided into three zones: Commercial, Parks and Residential. The boundaries of the zones are set forth on a map posted in the Town Hall. *Editor's Note: The Zoning Map is included in a pocket at the end of this volume.*
- B. The Commercial Zone is designated in yellow. More specifically, the Commercial Zone extends to a depth of 150 feet on the west side of Route No. 1 between Delaware Avenue and James Street, and to a depth of 130 feet on the east side of Route No. 1 between Atlantic Street and James Street.
- C. The Parks Zone is designated in green. More specifically, the Parks Zone shall include public or private sites designated for use as a park and used for recreational activities common to a park such as, but not limited to, playgrounds, sports, kayaking and other recreational uses.

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- D. All remaining land in the Town of Fenwick Island, Delaware, is zoned Residential.

INSERT NEW:

§ 160-6. Parks Zone.

- A. Use regulations. Unless herein provided, no building or premises or site shall be used or any building or structure be hereafter erected, altered or repaired in the Parks Zone except for one or more of the following principal permitted uses:
1. Public athletics facilities.
 2. Playgrounds.
 3. Outdoor educational facilities.
 4. Public outdoor meetings.
 5. Public recreation.
 6. Public piers and docks.
- B. Accessory uses and accessory structures permitted:
1. Off-street parking and loading facilities.
 2. Other accessory uses which are incidental to recreational uses.
 3. Small utility buildings or other small storage structures used for storage of equipment and supplies used in connection with park related activities.
 4. The height of an accessory structure shall not exceed 15 feet above existing ground contour level at the accessory structure site location.
- C. Area and yard requirements:
1. Building structures, such as but not limited to, utility buildings, playground equipment, picnic tables, and gazebos shall meet the following minimum setbacks requirements:
 - a) Front yard setback – 20 feet from the front lot line.
 - b) Rear yard setback – 10 feet from the rear lot line.
 - c) Side yard setback - 5 feet from each side lot line.
 2. A fence not to exceed six feet in height shall be permitted to screen the park from adjacent residential properties. Such a fence shall not be completely solid, but shall have openings comprising approximately 20% to 30% of the total surface area of the fence in order to provide for the flow-through of air.
- D. Town Council may adopt by Resolution additional rules and regulations applicable to any park owned and/or operated by the Town. Additional rules and regulations applicable to any park that is privately owned may be imposed by the Town Council from time to time, but shall require an amendment to the zoning ordinances of the Town.

Re-number remaining chapters.

Posted: April 30, 2012